



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 106

[Docket No. USCG-2015-0086]

RIN 1625-AC23

Requirements for Vessels with Registry Endorsements or Foreign-Flagged Vessels that Perform Certain Aquaculture Support Operations.

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is amending its regulations to implement Subsection 901(c) of the Coast Guard Authorization Act of 2010, which grants the Secretary of the U.S. Department of Transportation (DOT) the authority to issue a waiver allowing a documented vessel with only a registry endorsement or a foreign-flagged vessel to be used in certain aquaculture operations. Specifically, those operations include the treatment and/or protection of aquaculture fish from disease, parasitic infestation, or other threats to their health. The new part establishes the requirement for an owner or operator of a vessel that is issued a waiver allowing the vessel to

conduct aquaculture support operations by the Secretary of DOT to notify the Coast Guard that the vessel owner or operator has been issued such a waiver. The part also establishes operational and geographic requirements for vessels that are issued such a waiver.

DATES: This final rule is effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2015-0086. To view public comments or documents mentioned in this preamble as being available in the docket, go to the Federal eRulemaking Portal at <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. David Belliveau, Fishing Vessels Division (CG-CVC-3), U.S. Coast Guard; telephone 202-372-1247, email [David.J.Belliveau@uscg.mil](mailto:David.J.Belliveau@uscg.mil).

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## I. Abbreviations

BLS	U.S. Bureau of Labor Statistics
CBP	U.S. Customs and Border Protection
CFR	Code of Federal Regulations
CGAA	Coast Guard Authorization Act of 2010
COD	Certificate of Documentation
DHS	U.S. Department of Homeland Security
DOT	U.S. Department of Transportation
E.O.	Executive Order
FR	<u>Federal Register</u>
MARAD	Maritime Administration
NAICS	North American Industry Classification System
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
Pub. L.	Public Law
RA	Regulatory Analysis
SNPRM	Supplemental notice of proposed rulemaking
U.S.C.	United States Code

## II. Regulatory History

On July 30, 2015, we published a notice of proposed rulemaking (NPRM) entitled "Requirements for Vessels With Registry Endorsements or Foreign-Flagged Vessels That Perform Certain Aquaculture Support Operations" in the Federal Register (FR) (80 FR 45491). We received one submission with three comments on the proposed rule. No

public meeting was requested and none was held.

### III. Basis and Purpose

Under Title 46 of United States Code (U.S.C.) 12102(d)(1), the Secretary of the U.S. Department of Transportation (DOT) may issue an "Aquaculture Support Operations Waiver" to allow a documented vessel with only a registry endorsement or a foreign-flagged vessel to be used in operations that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health if the Secretary finds, after publishing a notice in the Federal Register, that a suitable vessel of the United States is not available to perform those services.<sup>1</sup>

In this final rule, the Coast Guard is amending 46 CFR subchapter I - Cargo and Miscellaneous Vessels, by adding a new part 106 that establishes the requirement for an owner or operator of a vessel that is issued an Aquaculture Support Operations Waiver by the Maritime

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<sup>1</sup>These services are generally performed by "wellboats" (commonly understood as fishing and housing facility vessels) that pump fish out of their pens and into the vessels' fish holds. The fish hold is full of sea water and while the fish are inside the fish hold, a metered dose of de-lousing chemical is added to the fish hold. The water is then circulated vigorously to ensure complete mixing of the de-lousing agent. Upon completion of the treatment cycle, the fish are returned to their pens.

Administration (MARAD)<sup>2</sup>, for the purpose of conducting certain aquaculture support operations, to notify the Coast Guard that such a waiver has been issued. This new part also establishes operational and geographic requirements for a vessel that is issued such a waiver.

#### IV. Background

On May 27, 2010, U.S. Customs and Border Protection (CBP) ruled that aquaculture activities constitute "engag[ing] in the fisheries," and is thus within the meaning of 46 U.S.C. 108, for which a vessel must possess a Certificate of Documentation (COD) endorsed pursuant to 46 U.S.C. 12113 (see CBP ruling HQ H105735).<sup>3</sup> Title 46 U.S.C. 12113 limits employment in the fisheries to a vessel issued a COD with a fishery endorsement. This effectively disqualifies any foreign-flagged vessel from carrying out these activities.

Section 901 of the Coast Guard Authorization Act of 2010 (CGAA) (Pub. L. 111-281) amended 46 U.S.C. 12102 by adding subsection (d). Pursuant to 46 U.S.C. 12102(d)(1), the Secretary of DOT may issue an Aquaculture Support Operations Waiver allowing a documented vessel with a

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<sup>2</sup> On October 14, 2014, the Secretary of Transportation delegated the authority to administer paragraph 901(c)(1) of the CGAA to the Maritime Administrator, MARAD.

<sup>3</sup> This ruling is available online from CBP by going to <http://rulings.cbp.gov/>, entering "HQ H105735" in the "Search" box and clicking "Go".

registry endorsement or a foreign-flagged vessel to be used in operations that treat or protect aquaculture fish from disease, parasitic infestation, or other threats to their health if the Secretary finds, after publishing a notice in the Federal Register, that a suitable vessel of the United States is not available that could perform those services.

This rule is necessary to implement the Coast Guard's rulemaking responsibility as prescribed by 901(c)(2) of the CGAA. In that paragraph, Congress directed the Secretary of the U.S. Department of Homeland Security (DHS), the department under which the Coast Guard operates, to promulgate regulations that are necessary and appropriate to implement subsection 901(c). It also authorizes the Secretary of DHS to "grant interim permits pending the issuance of such regulations upon receipt of applications containing the required information."

Through this rule, we are establishing the requirement that an owner or operator of a vessel who is issued an Aquaculture Support Operations Waiver by MARAD for the purpose of conducting certain aquaculture support operations must notify the Coast Guard that such a waiver has been issued. This rule also establishes operational

and geographic requirements for vessels that are issued such waivers.

#### V. Discussion of Comments and Changes

One commenter submitted three comments for our consideration. These comments are available for viewing in the public docket for this rulemaking, where indicated under **ADDRESSES**. Below, we summarize these comments and our responses to them.

A. The commenter states that instead of putting the notification burden on the owner/operator, the responsibility to notify the Coast Guard that an Aquaculture Support Operations Waiver has been issued for a particular vessel should rest with the DOT. The commenter states that having DOT notify the Coast Guard that DOT has issued an Aquaculture Support Operations Waiver is more efficient and practical than having the owner/operator notify the Coast Guard and that doing so would also reduce the risk of communication error or delay.

We do not agree. First, it is important to note that the statute does not require MARAD to notify the Coast Guard that it has issued an Aquaculture Support Operations Waiver for an otherwise unqualified vessel to conduct aquaculture support operations in U.S. waters. Second,

while the Coast Guard may expect MARAD to provide notification to the Coast Guard that it has issued an Aquaculture Support Operations Waiver, we cannot control the timing of MARAD's notification to the Coast Guard.

It also benefits the owner/operator of a vessel to have full control over when to notify the Coast Guard that he or she has received an Aquaculture Support Operations Waiver because it facilitates faster notification and eliminates the potential for administrative delay. Accordingly, if an owner/operator wants to be sure that the Coast Guard is notified of his or her vessel's Aquaculture Support Operations Waiver before conducting aquaculture support operations in U.S. waters, it benefits the owner/operator to notify the Coast Guard because it removes the risk of administrative delay that could result in the Coast Guard not receiving notification before the vessel engages in aquaculture support operations.

Prompt notification is necessary to ensure that the Coast Guard does not expend resources unnecessarily by deploying assets to conduct a law enforcement boarding to determine the eligibility of a vessel with only a registry endorsement or a foreign-flagged vessel to engage in aquaculture support operations in U.S. waters.

As discussed earlier, CBP ruled that aquaculture



support activities constitute engaging in the fisheries, for which a vessel must possess a COD with a fishery endorsement. This effectively disqualifies any U.S. vessel without a "fisheries" endorsement or any foreign-flagged vessel from carrying out these activities without an Aquaculture Support Operations Waiver issued by MARAD. The notification requirement, therefore, is necessary for the Coast Guard's maritime domain awareness which, in turn, will help streamline the Coast Guard's law enforcement activities.

Additionally, placing the notification requirement on the owner/operator (the waiver-applicant), is not unprecedented. The "Small Vessel Waiver Program" is a program administered by MARAD. Under that program, MARAD has the authority to grant waivers of the U.S. build requirements for foreign-built vessels to operate in the United States as commercial passenger vessels. Under the Small Vessel Waiver Program, at the time that MARAD issues a waiver to the applicant, MARAD informs the applicant of the need to notify the Coast Guard's National Vessel Documentation Center that a waiver has been issued which, in turn, makes the vessel eligible to receive a coastwise trade endorsement on the vessel's Certificate of Documentation. 46 CFR 388.6(a)(2) (MARAD requirement); 46

CFR 67.7 (Coast Guard COD requirement). Placing the responsibility for notifying the Coast Guard that an owner/operator has received a waiver from MARAD to engage in aquaculture support operations is consistent with the notification responsibility provided under an existing, similarly administered MARAD program.

B. The commenter next states that the requirement to limit the vessel's aquaculture support operations to the geographic area identified in DOT's Aquaculture Support Operations Waiver lacks rationale and imposes a restriction not contemplated in the statute. We agree that the statute does not impose any restrictions regarding the geographic area within which a vessel may conduct aquaculture support operations. However, a vessel's geographic operational area is a factor in MARAD's analysis of whether there are any U.S. vessels available to perform those operations. Therefore, the requirement to conduct aquaculture support operations within the geographic area identified in MARAD's Aquaculture Support Operations Waiver, serves to uphold the terms of the waiver, which is issued, in large part,

based upon the representations (including operational geographic representations<sup>4</sup>) of the owner/operator.

In the interest of providing flexibility consistent with the statute and the geographical limits of the Aquaculture Support Operations Waiver, however, the Coast Guard will accept waivers for operations in multiple locations. Accordingly, if an owner/operator anticipates that the vessel's aquaculture support operations will occur in several geographic locations, then the owner/operator can list those locations in its Aquaculture Support Operations Waiver application to MARAD to aid MARAD in its analysis of whether there are any suitable U.S.-flagged vessels available to conduct aquaculture support operations in those identified areas. The Coast Guard has revised § 106.120(a)(2) to reflect the possibility that a waiver may allow operations in more than one location. Because this change is a logical outgrowth of the NPRM, a supplemental notice of proposed rulemaking (SNPRM) is unnecessary. Further opportunity for public comment would only serve to delay completion of

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<sup>4</sup> Since 2010, in every application for an interim permit that the Coast Guard has received [eight as of November 2015], the applicant has identified, in general terms, the geographic area in which the vessel would be conducting aquaculture support operations. This same geographic area of operations information was, in turn, also provided to MARAD for the purpose of aiding MARAD in its U.S. vessel availability analysis.

this rulemaking. Thus, we find good cause under 5 U.S.C. 553(b) (B) to proceed with publication of this final rule without an SNPRM.

C. Lastly, the commenter inquires whether the regulations in this rulemaking represent the completion of the Coast Guard's rulemaking obligations under subsection 901(c) of the CGAA. At this time, the Coast Guard does not expect to engage in further rulemaking to implement subsection 901(c). However, as prescribed in paragraph 901(c) (1), the Secretary of DOT was provided the discretionary authority to issue waivers allowing documented vessels with registry endorsements or foreign-flagged vessels to be used in aquaculture support operations when suitable vessels of the United States are not available that could perform those services. As noted above, on October 14, 2014, the Secretary of DOT delegated the authority to administer paragraph 901(c) (1) of the CGAA to the Maritime Administrator. Accordingly, we defer to MARAD on the process associated with the application for, and the issuance of, an Aquaculture Support Operations Waiver.

D. After publication of the NPRM, we determined that the wording of the "Penalties" section of the proposed regulation, § 106.125, raised an unintended ambiguity by

providing that a vessel owner, operator, or charterer not operating a vessel as required in this part is subject to penalty under 46 U.S.C. 12151. We believe this wording may be incorrectly interpreted to mean that there can only be a violation if the vessel is not operating. We are, therefore, making a minor change to § 106.125 in this final rule to remove that unintended ambiguity by amending the section to provide that violation of this part is subject to the civil penalties set forth under 46 U.S.C. 12151. In addition to removing the unintended ambiguity, this wording is consistent with 46 U.S.C. 12151 and is also consistent with other Coast Guard regulations. See, for example, 46 CFR 4.06-70 and 46 CFR 16.115. Because this change is a logical outgrowth of the NPRM, an SNPRM is unnecessary. In addition, an SNPRM is unnecessary because the change is a non-substantive clarification. Further opportunity for public comment would only serve to delay completion of this rulemaking. Thus, we find good cause under 5 U.S.C. 553(b) (B) to proceed with publication of this final rule without an SNPRM.

Additionally, in light of the Secretary of Transportation's delegation to MARAD to administer the Aquaculture Support Operations Waiver program, we are changing the nomenclature from "DOT" to "MARAD" in §

106.115 and § 106.120 to more accurately reflect the issuing authority for aquaculture waivers. Because this change is a logical outgrowth of the proposed rule, an SNPRM is unnecessary. For the same reasons discussed earlier, we find good cause under 5 U.S.C. 553(b) (B) to proceed with publication of this final rule without an SNPRM.

## VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

### A. Regulatory Planning and Review

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is not a significant regulatory action under subsection 3(f) of E.O. 12866 as supplemented by E.O. 13563. The Office of Management and Budget has not reviewed it under E.O. 12866. We developed an analysis of the costs and benefits of the rule to ascertain its probable impacts on industry. A final Regulatory Analysis (RA) follows.

This RA provides an evaluation of the economic impacts associated with this final rule. The table that follows provides a summary of the rule's costs and benefits.

Table 1: Summary of the Rule's Impacts

Category	Summary
Applicability	Owners or operators of vessels that are issued an Aquaculture Support Operations Waiver allowing a documented vessel with only a registry endorsement or a foreign-flagged vessel to be used in operations that treat aquaculture fish.
Affected Population	2 vessels
Costs to Industry and Government (\$, 7% discount rate)	10-year: \$819.65 Annualized: \$116.70
Unquantified Benefits	Allows the Coast Guard to readily identify vessels with waivers to perform certain aquaculture support operations.

Wellboats (or live fish carriers) were especially affected by CBP's ruling (HQ H105735) that aquaculture activities constitute "engaging in the fisheries" and are thus within the meaning of 46 U.S.C. 108, for which a vessel must possess a Certificate of Documentation endorsed pursuant to 46 U.S.C. 12113. Wellboats are highly specialized vessels that are used to treat farmed salmon. The wellboats are designed to service large inventories of farmed salmon during the salt-water grow-out phase and are specially equipped to protect the fish onboard the vessel. Direct treatment aboard a wellboat is currently the most efficient and effective method to treat salmon. If left untreated, salmon inventories can be destroyed and the industry can lose revenue. There are only a few coastwise qualified wellboats suitable and available for this work. This is why a considered Aquaculture Support Operations Waiver process that would allow inclusion of foreign-flagged wellboats is necessary.

Through this rulemaking, the Coast Guard is amending its regulations to implement subsection 901(c) of the CGAA. Under that provision, the Secretary of DOT has the authority to issue a waiver allowing a documented vessel with only a registry endorsement or a foreign-flagged vessel to be used in certain aquaculture support



operations that treat or protect aquaculture fish from disease, parasitic infestation, or other threats to their health if, after posting a notice in the Federal Register, the Secretary of DOT determines that no suitable U.S.-flagged vessel is available. Under this rule, a vessel owner or operator of a vessel who has been issued a waiver by MARAD to perform aquaculture support operations will be required to notify and provide a copy of the waiver to the Coast Guard. Through this rulemaking, we are also establishing operational and geographic requirements for a vessel that is issued a waiver by MARAD to perform aquaculture support operations. For more information on these requirements, refer to § 106.120 Operational and Geographic Requirements.

No changes were made in the RA of this final rule as a result of public comments. The only change in this final rule's RA is that we updated the labor rates to reflect the most recent available wage data.

#### Affected Population

The Coast Guard determined the affected population based on the number of Aquaculture Support Operations Waiver requests from vessel owners and operators. Since the 2010 CBP ruling, only one entity has applied for waivers for foreign-flagged wellboats to treat salmon.

This U.S. entity operates two foreign-flagged wellboats, and we anticipate that this entity will continue to apply for Aquaculture Support Operations Waivers in the future. Therefore, this rule is expected to affect one U.S. entity that operates two vessels. Depending on the growth of the salmon aquaculture industry, there is the potential for the number of affected vessels to increase in the future. However, current trends indicate no increase in growth in the salmon aquaculture industry. Therefore, we did not consider, in this analysis, an annual increase in the number of Aquaculture Support Operations Waivers that would be submitted to the Coast Guard.

#### Costs

In this rule, owners or operators of foreign-flagged vessels, which are issued waivers by MARAD to conduct certain aquaculture support operations, must notify the Coast Guard that such waivers have been issued. The costs of this rule include the costs to the industry to provide copies of the Aquaculture Support Operations Waivers and the costs to the Government to process the information. Aquaculture Support Operations Waivers will be issued on an annual basis per DOT requirements. Owners or operators of the vessels are required to provide copies of these waivers to the Coast Guard annually. Waivers are issued

individually for each vessel involved in aquaculture support operations, and therefore, costs are estimated on a per vessel basis.

#### Industry Costs

The Coast Guard estimates it will take 0.5 hours for a legal secretary to copy and send each Aquaculture Support Operations Waiver to the Coast Guard, via postal mail and electronic mail. The wage rate for a legal assistant was obtained from the U.S. Bureau of Labor Statistics (BLS), using Occupational Series 23-2011, Paralegals and Legal Assistants (May 2014). BLS reports that the mean hourly rate for a legal assistant is \$24.92.<sup>5</sup> To account for employee benefits, we use the load factor of 1.43, which we calculated from June 2014 BLS data.<sup>6</sup> The loaded wage rate for a *legal* assistant is estimated at \$35.70 per hour (\$24.92 wage rate x 1.43 load factor). The expected cost to industry to provide copies of the Aquaculture Support Operations Waiver is \$35.70 (\$35.70 x 0.5 hours x 2 vessels). The total 10-year undiscounted industry cost of this final rule is \$357. Table 2 shows the total 10-year cost of two affected

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<sup>5</sup>Mean wage, <http://www.bls.gov/oes/2014/may/oes232011.htm>

<sup>6</sup>Employer Costs for Employee Compensation news release text provides information on the employer compensation, and can be found at [http://www.bls.gov/schedule/archives/ecec\\_nr.htm](http://www.bls.gov/schedule/archives/ecec_nr.htm)

vessels to be \$250.74 and annualized cost of \$35.70, both discounted at 7 percent.

Table 2: Total 10-Year Cost to Industry

Year	Undiscounted Costs	Discount Rate	
		7%	3%
1	\$35.70	\$33.36	\$34.66
2	\$35.70	\$31.18	\$33.65
3	\$35.70	\$29.14	\$32.67
4	\$35.70	\$27.24	\$31.72
5	\$35.70	\$25.45	\$30.80
6	\$35.70	\$23.79	\$29.90
7	\$35.70	\$22.23	\$29.03
8	\$35.70	\$20.78	\$28.18
9	\$35.70	\$19.42	\$27.36
10	\$35.70	\$18.15	\$26.56
Total	\$357.00	\$250.74	\$304.53
Annualized		\$35.70	\$35.70

Note: Total may not add due to rounding.

#### Government Costs

The Coast Guard estimates it will take 0.5 hours per vessel for Coast Guard personnel at the GS-13 level to record the information from the Aquaculture Support Operations Waivers. The fully loaded wage rate for a GS-13 is \$81, per Commandant Instruction 7310.1Q.<sup>7</sup> The total cost for the Coast Guard is \$81 [(0.5 hours x \$81) x 2 vessels]. The total 10-year undiscounted Government cost of this final rule is \$810. Table 3 shows the total Government 10-year discounted cost at \$568.91, and the annualized cost at \$81, both discounted at 7 percent.

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<sup>7</sup>See [http://www.uscg.mil/directives/ci/7000-7999/CI\\_7310\\_1Q.pdf](http://www.uscg.mil/directives/ci/7000-7999/CI_7310_1Q.pdf)

Table 3: Total Government Cost

Year	Undiscounted Costs	Discount Rate	
		7%	3%
1	\$81.00	\$75.70	\$78.64
2	\$81.00	\$70.75	\$76.35
3	\$81.00	\$66.12	\$74.13
4	\$81.00	\$61.79	\$71.97
5	\$81.00	\$57.75	\$69.87
6	\$81.00	\$53.97	\$67.84
7	\$81.00	\$50.44	\$65.86
8	\$81.00	\$47.14	\$63.94
9	\$81.00	\$44.06	\$62.08
10	\$81.00	\$41.18	\$60.27
Total	\$810.00	\$568.91	\$690.95
Annualized		\$81.00	\$81.00

Note: Total may not add due to rounding.

Table 4 displays the total costs on an undiscounted basis, and discounted at 7 percent and 3 percent interest rates, respectively. The total 10-year undiscounted cost of this rule is \$1,167. The total 10-year (industry and government) discounted cost of this final rule is \$819.65 and the annualized cost is \$116.70, both discounted at 7 percent.

Table 4: Total Costs of the Rule

Year	Total Undiscounted Costs	Total, Discounted	
		7%	3%
1	\$116.70	\$109.07	\$113.30
2	\$116.70	\$101.93	\$110.00
3	\$116.70	\$95.26	\$106.80
4	\$116.70	\$89.03	\$103.69
5	\$116.70	\$83.21	\$100.67
6	\$116.70	\$77.76	\$97.73
7	\$116.70	\$72.67	\$94.89

8	\$116.70	\$67.92	\$92.12
9	\$116.70	\$63.48	\$89.44
10	\$116.70	\$59.32	\$86.84
Total	\$1,167.00	\$819.65	\$995.47
Annualized		\$116.70	\$116.70

Note: Total may not add due to rounding.

### Benefits

This rule does not provide any quantitative benefits. However, it does have a qualitative benefit. It provides the Coast Guard with greater maritime domain awareness through the requirement that an owner or operator of a vessel who has received an Aquaculture Support Operations Waiver from MARAD must submit a copy of the waiver to the Coast Guard. The requirement to submit a copy of the waiver to the Coast Guard will ensure that appropriate Coast Guard officials are aware that foreign-flagged vessels or vessels with only registry endorsements are conducting aquaculture support activities in U.S waters pursuant to an Aquaculture Support Operations Waiver issued by DOT under the authority of 46 U.S.C. 12102(d)(1).

### B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There is one U.S. entity that operates two foreign-flagged vessels that would be affected by this rulemaking at this time. This entity is neither a not-for-profit nor a governmental organization. The North American Industry Classification System (NAICS) for this entity is 424460, Fish and Seafood Merchant Wholesalers. An entity with this NAICS code is considered a small entity if it has less than 100 employees. Using the small entity definition for the NAICS code, we determined the entity is classified as a small entity, since this entity has 40 employees. Table 5 shows information on the U.S. entity classified as a small entity by NAICS code, and the small entity standard size established by the Small Business Administration.

Table 5: NAICS Code and Small Entities Size Standards

NAICS Code	Description	Small Business Size Standard
424460	Fish and Seafood Merchant Wholesalers	Less than 100 employees

We reviewed business revenue data provided by a publicly

available source<sup>8</sup> and found that this entity has annual revenue estimated at \$4,800,000. Therefore, the expected burden on the company from this rulemaking is estimated at less than 0.001 percent of total annual revenue.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

#### C. Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

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<sup>8</sup>MANTA (<http://www.manta.com/>) is an online business service directory and search engine that provides business revenue and size data.



comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. This collection is explained below under ESTIMATE OF TOTAL ANNUAL BURDEN. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under the provisions of the rule, an owner or operator of a vessel who is issued an Aquaculture Support Operations Waiver to conduct certain aquaculture support operations must notify the Coast Guard that such a waiver has been issued.

TITLE: Requirements for Vessels that Perform Certain Aquaculture Support Operations

OMB Control Number: 1625-0126

SUMMARY OF THE COLLECTION OF INFORMATION: An owner or operator of a vessel who is issued a waiver to conduct certain aquaculture support operations must notify the Coast Guard that such a waiver has been issued.

NEED FOR INFORMATION: This information is necessary to ensure that appropriate Coast Guard officials are aware that foreign-flagged vessels or documented vessels with only registry endorsements are conducting aquaculture support activities in U.S waters pursuant to an Aquaculture Support Operations Waiver issued by DOT under the authority of 46 U.S.C. 12102(d) (1).

USE OF INFORMATION: The Coast Guard would use this information to enhance its maritime domain awareness and to streamline its law enforcement activities by ensuring that Coast Guard law enforcement officials are aware that foreign-flagged vessels or vessels with only a registry endorsement are conducting aquaculture support activities in U.S. waters pursuant to an Aquaculture Support Operations Waiver issued by DOT under the authority of 46 U.S.C. 12102(d) (1).

DESCRIPTION OF THE RESPONDENTS: The respondents are owners or operators of vessels that are issued Aquaculture Support Operations Waivers by MARAD to conduct certain aquaculture support operations.

NUMBER OF RESPONDENTS: The number of respondents is one per year.

FREQUENCY OF RESPONSE: Aquaculture Support Operations Waivers are issued on an annual basis, so the frequency of response is one response per vessel, per year.

BURDEN OF RESPONSE: The estimated burden for each respondent is 0.5 hours per vessel to copy Aquaculture Support Operations Waivers and send information to the Coast Guard.

ESTIMATE OF TOTAL ANNUAL BURDEN: There is currently one entity operating two vessels that have been issued Aquaculture Support Operations Waivers. The total annual burden would be 1 hour (0.5 hours x 2 vessels). Assuming this task is performed by a legal assistant at a loaded hourly rate of \$35.70, the annual cost burden for this requirement is \$35.70 (\$35.70 loaded wage rate x 1 total entity hours).

You are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has not yet completed its review of this collection. Therefore, we are not making 46 CFR 106.115 effective until OMB completes action on our information collection request, at which time we will

publish a Federal Register notice describing OMB's action and, if OMB grants approval, notifying you when that provision takes effect.

#### E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements as described in E.O. 13132. Our analysis is explained below.

This rule implements subsection 901(c) of the CGAA. Subsection 901(c) amends section 12102 of chapter 121 of 46 U.S.C. by adding a waiver of certain Federal vessel documentation requirements for vessels performing aquaculture support operations. In paragraph 901(c)(2), Congress granted the Coast Guard, via delegation from the Secretary, exclusive authority to promulgate regulations that are necessary and appropriate for permitting nonqualified vessels to perform certain aquaculture support operations. Therefore, 46 CFR part 106 is

established within a field foreclosed from State or local regulation. In light of the analysis above, this rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under

E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370f, and have determined

that it is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final environmental analysis checklist supporting this determination is available in the docket. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraphs 34(a) and 34(d) of the Instruction. These paragraphs respectively pertain to promulgation of regulations that are editorial or procedural in nature, and those concerning vessel documentation requirements. This rule entails a minor regulatory change pertaining to vessels used in certain aquaculture operations and the Coast Guard's notification requirements for those vessels. Specifically, DOT has the authority to issue waivers allowing a documented vessel with a registry endorsement or a foreign-flagged vessel to be used in aquaculture support activities. The new part establishes the requirement for an owner or operator of a vessel that is issued a waiver to notify the Coast Guard. The part also establishes operational and geographic requirements for vessels that are issued such a waiver.

List of Subjects in 46 CFR Part 106

Aquaculture operations, Coastwise, Fishing vessels, Registry endorsement, Waiver.

For the reasons discussed in the preamble, the Coast



Guard amends 46 CFR by adding part 106 to read as follows:

Title 46—Shipping

PART 106—REQUIREMENTS FOR NONQUALIFIED VESSELS THAT  
PERFORM CERTAIN AQUACULTURE SUPPORT OPERATIONS

Sec.

106.100 Purpose.

106.105 Applicability.

106.110 Definitions.

106.115 Notification requirements.

106.120 Operational and geographic requirements.

106.125 Penalties.

Authority: Sec. 901(c)(2), Pub. L. 111-281, 124  
Stat. 2905, Title IX; Department of Homeland Security  
Delegation No. 0170.1.

§ 106.100 Purpose.

The regulations in this part implement 46 U.S.C.  
12102(d).

§ 106.105 Applicability.

The regulations in this part apply to a documented  
vessel with only a registry endorsement or a foreign-  
flagged vessel that has been issued an Aquaculture Support  
Operations Waiver by the Department of Transportation  
(DOT) under 46 U.S.C. 12102(d)(1), for the purpose of  
conducting aquaculture support operations.

§ 106.110 Definitions.

Aquaculture support operations means activities that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health.

§ 106.115 Notification requirements.

(a) Prior to operating in U.S. waters, a vessel owner, operator, or charterer that has been issued an Aquaculture Support Operations Waiver by DOT's Maritime Administration (MARAD) to conduct aquaculture support operations must notify the Coast Guard in writing of its status. The notification must include the following information:

- (1) The vessel(s) name(s);
- (2) The vessel's official and/or International Maritime Organization number;
- (3) The geographic location within the waters of the United States where the vessel(s) will conduct treatment operations;
- (4) The period of time during which the Aquaculture Support Operations Waiver for the vessel(s) is approved including:

- (i) The start date (MM/DD/YYYY); and
- (ii) The expiration date (MM/DD/YYYY); and
- (5) A copy of the MARAD-issued Aquaculture Support Operations Waiver.

(b) Written notification must be made to the Commandant (CG-CVC), ATTN: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7501, or by email to CG-CVC-3@uscg.mil.

§ 106.120 Operational and geographic requirements.

(a) Vessels with a MARAD-issued Aquaculture Support Operations Waiver, issued under 46 U.S.C. 12102(d)(1), for the purpose of performing aquaculture support operations are subject to the following restrictions:

(1) Commercial operations in U.S. waters other than operations that treat or protect aquaculture fish are prohibited;

(2) While conducting aquaculture support operations, vessels will operate solely within the geographic location(s) identified in the waiver issued by MARAD; and

(3) Vessels will not conduct aquaculture support operations beyond the period of time approved in the waiver issued by MARAD.

(b) Vessels conducting aquaculture support operations will, at all times, maintain a copy of the waiver issued by MARAD on board the vessel as proof of its eligibility to conduct aquaculture support operations.

§ 106.125 Penalties.

A person who violates any requirement prescribed by the regulations in this part is subject to penalty under 46 U.S.C. 12151.

Dated: September 9, 2016

V.B. Gifford, Jr.,  
Captain, U.S. Coast Guard,  
Director of Inspections and Compliance.  
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